

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
COLUMBIA ASPHALT COMPANY,)
Appellant,)
vs.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 176

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter is the appeal of a \$250.00 civil penalty for ten alleged violations of Article III, Section 3.01 of respondent's Regulation I. It came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) at 3:30 p.m., September 13, 1972 in respondent's Vancouver offices.

Appellant was represented by its General Manager, George Ledford. Respondent appeared through its counsel, James D. Ladley. Thomas E. Archer, Kelso court reporter, recorded the proceedings.

The hearing began as an informal conference, but when no mutually

1 acceptable compromise was found, it assumed the status of a formal
2 hearing. Witnesses were sworn and testified.

3 On the basis of testimony heard, the Pollution Control Hearings
4 Board prepared Proposed Findings of Fact, Conclusions and Order which
5 were submitted to the appellant and respondent on October 20, 1972. No
6 objections or exceptions to the Proposed Findings, Conclusions and Order
7 having been received, the Pollution Control Hearings Board makes and
8 enters the following:

9 FINDINGS OF FACT

10 I.

11 Article III, Section 3.01 of Regulation I of the Southwest Air
12 Pollution Control Authority requires that a permit must be sought and
13 received from the Authority prior to the construction and installation
14 of a device which will produce air contamination.

15 II.

16 Appellant, a Vancouver, Clark County firm doing asphalt work, had
17 knowledge of the existence of both the Southwest Air Pollution Control
18 Authority and its Regulation I.

19 III.

20 In July, 1972, appellant was performing a contract with the United
21 States Forest Service on federal land near Panther Creek in Skamania
22 County. Skamania County is in the jurisdictional area of the Southwest
23 Air Pollution Control Authority. Required to clean rock prior to
24 crushing, appellant was not permitted by federal officials to wash the
25 material. Operating on a \$100-a-day penalty contract, appellant, the
26 day after being refused permission to wash the material, obtained a
27 rock-drying device, installed it on location, and used it during portions

FINDINGS OF FACT,

1 of July 21, 22, 24, 25 and 26, 1972.

2 IV.

3 Appellant was under the impression that no state or local permits
4 were required of him because (a) his project was on federal forest land,
5 and because (b) he believed his contract required the Federal Govern-
6 ment to obtain all necessary permits.

7 V.

8 On July 22, 1972, after being informed by federal officials that
9 a permit for the rock-drying device was required by the Southwest Air
10 Pollution Control Authority, appellant inquired of respondent whether
11 this was so. Informed it was, pursuant to Article III, Section 3.01 of
12 Regulation I, appellant applied for a permit. Said application was
13 received by respondent on July 24, 1972. An inspector of the Southwest
14 Air Pollution Control Authority went to the site on July 27, 1972, saw
15 the rock-dryer and asked for its shutdown as an air contaminant source.
16 This was done immediately.

17 VI.

18 Subsequently, respondent issued a Notice of Violation for ten
19 offenses during the five days in which the rock-dryer had been in
20 operation and assessed a total penalty of \$250.00, although the maximum
21 allowable penalty for each violation could have been \$250.00.

22 From these Findings of Fact, the Pollution Control Hearings Board
23 comes to these

24 CONCLUSIONS

25 I.

26 Appellant's contract with the United States Forest Service was not

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

placed before us and we can come to no conclusion as to appellant's contractual responsibility, if any, for obtaining necessary environmental permits. But, Article III, Section 3.01 of respondent's Regulation I--a regulation of which appellant had knowledge--is clear in requiring prior permit before the installation of any device likely to produce air contamination.

II.

We conclude, therefore, that appellant was in violation of respondent's Regulation I. It also is clear that appellant continued to operate his non-permit device for at least two days after his application for said device was received by respondent. Appellant's quarrel may rest with his federal contract; we have no knowledge of this. On the evidence presented to us, however, it is apparent that respondent's air contamination regulation was violated at Panther Creek at least for two consecutive days.

III.

Respondent was lenient in assessing a total of \$250.00 in civil penalties when the maximum allowable penalties for the ten cited violations could have totaled \$2,500.00.

Therefore, the Pollution Control Hearings Board makes this

ORDER

The appeal is denied; the cited violations are affirmed and appellant is directed to pay the imposed civil penalties of \$250.00.

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 DONE at Olympia, Washington this 29th day of December, 1972.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 Matthew W. Hill
6 MATTHEW W. HILL, Member

7 James T. Sheehy
8 JAMES T. SHEEHY, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER